

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

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|--------------------------|---|------------------------------|
| LEMORIAL SILK, |) | |
| Petitioner, |) | Civil Action No. 7:21cv00294 |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| HAROLD W. CLARKE, |) | By: Hon. Thomas T. Cullen |
| Respondent. |) | United States District Judge |

This matter is before the court on Petitioner Lemorial Silk's motion for stay and motion for extension of time to file his Notice of Appeal from the court's final order of July 12, 2022. Petitioner's motion for extension of time was received by the court on July 25, 2022, and was treated as a notice of appeal and transmitted to the United States Court of Appeals for the Fourth Circuit. On August 8, 2022, the court received Petitioner's motion for stay and a copy of a Motion to Dismiss his appeal for lack of jurisdiction because he had not filed a proper Notice of Appeal. On August 19, 2022, the appellate court granted Silk's motion for voluntary dismissal and dismissed the appeal.

Under 28 U.S.C. § 2107(c), this court may extend the time for filing a Notice of Appeal for good cause shown upon motion filed not later than 30 days after the deadline. Petitioner's motion for extension was filed July 25, 2022, one day before the deadline, and is therefore timely. The good cause for extending the time is Petitioner's apparent belief that the notice of appeal must be a well-researched legal document, rather than the simple notice required by the Rules, listing the names of the parties, the order being appealed from, and the name of the court being appealed to. *See* Fed. R. App. P. 3(c)(1).

Under Rule 4(b)(4) of the Federal Rules of Appellate Procedure, this court may extend the deadline **no more than 30 days** beyond the original deadline. The original deadline was July 26, 2022, which limits this court's ability to extend the deadline beyond **August 25, 2022**.

If petitioner believes that he needs more time to research the issues for his appeal, his appropriate course of action is to file a motion for extension of time to file his opening Brief in the Court of Appeals once that court has received the record from this court. *See* Fed. R. App. P. 27 and 28.

For the reasons stated above, Petitioner's motion for extension of time (ECF No. 33) is **GRANTED**, but only until August 25, 2022. The motion for stay (ECF No. 37) is **DISMISSED** as moot.

The clerk is directed to forward a copy of this Order to the parties.

ENTERED this 22nd day of August, 2022.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE